IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2)(b)

Description of Case

W.P.No. 287 (S/S) of 2001

Date of decision :- 18-10-2006

~~**A.F.R. (Approved for Reporting)**~~

Not approved for reporting

Date :- 18-10-2006 Initials of Judge

Note :-Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

Civil Misc. Writ Petition No. 287 (S/S) of 2001
(Old No. 28799 (S/S) of 1999)

Sarju Prasad Tyagi
S/o late Shri N.S. Tyagi
R/o 826 Dayanand Nagri, Jwalapur
District Haridwar .....Petitioner

Versus

1. State of U.P. through its Secretary Revenue Department, Civil Secretariat, Lucknow
2. District Magistrate, Haridwar
3. Ram Chandra Singh, Administrative Officer Collectorate, Haridwar .....Respondents

Dated :-18th October, 2006

Mr. Jagdish Prasad i/b for Sri Sharad Sharma learned Advocate for the petitioner.
Mr. N.P. Shah learned Standing Counsel.

Hon'ble J.C.S. Rawat, J.

1. By means of this writ petition under section 226 of the Constitution of India, the petitioner has sought the following reliefs:-

(i) issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 16/17.5.1999 passed by the respondent no.2 (Annexure-7 to the writ petition).

(ii) issue a writ, order of direction in the nature of mandamus directing the respondents to make the payment of earned leave encashment for 71 days.

(iii) Issue any other writ, order or direction as this Hon'ble Court may deem fit an proper in the circumstances of the case.

(iv) Award the costs of the petition to the petitioner.

2. The petitioner's case is that he was working on the post of Revenue Recordkeeper in Collectorate Haridwar and he was retired on 31.07.1996 after attaining the age of superannuation. The employees of the U.P. Ministerial Collectorate Employees Union Branch, Haridwar went on strike from the period 15.11.1994 to 24.1.1995 which comes to 71 days. The State Government by its order dated 31.12.1994 has taken a decision that the strike period of the employees, who were on strike, would be treated as casual leave, earned leave or medical leave. On conciliation between the employees and the State Government, a decision was taken by the District Magistrate that the pay for the strike period would be given to the striking employees treating the period as leave period. The petitioner was retired on 31.07.2006 after attaining the age of superannuation. Thereafter, he moved an application before the District Magistrate, Haridwar for seeking the encashment of earned leave due in his account. Several reminders were sent to The District Magistrate, Haridwar. The District Magistrate Haridwar sanctioned the encashment of 40 days earned leave and the payment for the same was also made to the petitioner. A writ petition No.12904/1999 was filed by the petitioner before the Allahabad High Court for a direction to respondent to pay encashment in lieu of earned leave of 71 days. The Allahabad High Court vide its order dated 1.4.1999 directed the respondent to consider the representation of the petitioner and pass a reasoned order as to why the petitioner is not entitled for amount or to pay the same within a period of one from the date of receipt of copy of the order. In pursuance of the order of the Allahabad High Court, the District Magistrate vide its order dated 16/17.05.1999

(Annexure 7 to the writ petition) decided the representation of the petitioner and held that the petitioner had only 40 days earned leave in his account and as such he was granted the encashment of 40 days. It was further held that the leave of 71 days was granted by the District Magistrate, Haridwar during the period of the strike as medical leave and later on it was revealed that he had no medical leave due in his account, hence his medical leave was converted into the earned leave. Feeling aggrieved by this, the petitioner has filed the present petition.

3. Heard learned counsel for the parties and perused the record.

4. Learned counsel for the petitioner contended that the petitioner was granted 71 days medical leave for the strike period of 71 days and he had medical leave due in his account. It was further contended that the petitioner has been deprived of by not giving the encashment for the period of 71 days for which he was entitled. According to the learned Standing Counsel for the respondent, the petitioner had only 40 days leave in his account. The period of 71 days (strike period) was granted as medical leave, but when it was revealed that he had no medical leave in his account it was converted into earned leave. Therefore, the petitioner is not entitled to get any relief. Now, it is to be decided whether there was any leave as has been argued by the petitioner. It is a disputed question of fact, which cannot be decided by this Court. There is a disputed question of fact as to whether there was only 40 days leave in the account of petitioner or it was more than 40 days.

5. Learned counsel for the petitioner contended that the respondent had wrongly entered the leaves in the

service book of the petitioner. As a matter of fact, the leave should have been credited in his account more than 40 days. The leave account had not been properly maintained by the respondent. Learned counsel for the respondent refuted the contention and contended that the leave account had been properly maintained and there was no leave due in his account. It is also a disputed fact and the disputed question cannot be decided by this Court with taking the evidence and the petitioner may take the appropriate remedy in the appropriate court. It was further stated by the respondent that only 40 days' leave was in his account and rest of the leave was exhausted during the period of strike. As such he had no leave in his account. Keeping in view of this statement the petitioner could not demonstrate as to how more than 40 days was due in his account.

6. In view of the foregoing discussion, the petition is devoid of merit and is liable to be dismissed. The petition is dismissed accordingly. No order as to costs.

(J.C.S. Rawat, J.)

Dated 18.10.2006
LSR